

S.B. CIVIL WRIT PETITION NO.8751/2005
Gyan Chand Vs. ADJ, Beawar & Anr.

Date of order : 23.5.2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Rajendra Prasad for the petitioner.
Shri S.R. Surana for the respondents.

Heard learned counsel for the parties.

The petitioner has challenged the order dated 26.7.2005 passed by the Additional District Judge, Beawar whereby that court while accepting application under Order 41 Rule 5 read with Section 151 CPC file by respondent no.2 directed that the petitioner as tenant in the shop let out to him by respondent no.2 would be required to pay sum of Rs.2000/- as mesne profit with the further direction that in case of default in payment of such mesne profit for consecutive three times this

order would lapse.

Learned counsel argued that there was a specific issue mentioned and the court had given finding adverse to respondent no.2 in the judgment/decreed and the decree in fact contained stipulation to the effect that plaintiff-petitioner would be required to make payment of the mesne profit @ Rs.165/- till the possession was handed over to the respondent landlord. Learned counsel, therefore, argued that the appellate court was required to consider that aspect and the specific issue and as to why he decided to deviate from it.

Shri S.R. Surana, learned counsel for the respondents opposed the petition

and submitted that the order passed by the appellate court was based on the law settled by the Hon'ble Supreme Court including Aatmaram Properties (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd, 2005(1) WLC (SC) Civil 340 :: (2005) 1 SCC 705 and Anderson Wright & Co. Vs. Amarnath Roy & Ors, AIR 2005 SC 2457 and that the power of the appellate court cannot be restricted by any such stipulation as has been referred to by them in a decree. He argued that the order passed by the learned appellate court does not suffer from any error, and therefore, the petition be dismissed.

I have heard learned counsel for the petitioner and perused the material on record. Although, it appears that the issue

with regard to mesne profit was indeed upheld by the trial court and that issue was decided against the respondent landlord but the issue would obviously relate to the period prior to the date of decree. Mere mention in the judgment and a stipulation to that effect in a decree that the petitioner tenant would be liable to pay a sum of Rs.165/- as mesne profit which in fact the payable rent could not be restricted or otherwise control the power of the appellate court as envisaged in Order 41 Rule 5 CPC. The order dated 26.7.2005 is fairly detailed one and cannot therefore be said to be unreasoned. What beyond has been stated no further discussion needed to be made, given the nature and scope of the provision under which that order was passed. Learned

appellate has referred to and relied on various judgments of the Hon'ble Supreme Court, I do not find any infirmity or error apparent on the face of record so as to warrant interference by this Court. If the petitioner fails to deposit the arrears within two months, the interim order passed by the appellate court would be treated to have been vacated.

The writ petition is dismissed.

(MOHAMMAD RAFIQ), J.

Skant/-